

**Southeastern Bankruptcy Law Institute**

**THIRTY-FIFTH ANNUAL  
BANKRUPTCY CONFERENCE**

***How to Bring and Defend  
Claims Objections in  
Commercial and Consumer Cases***

PRESENTED BY:

**The Honorable Margaret Cangilos-Ruiz**

**United States Bankruptcy Court for the Northern District of New York\***

\*I gratefully acknowledge the work of my law clerk, Ashley Mauldin, in helping to prepare these materials.

Southeastern Bankruptcy Law Institute's 35<sup>th</sup> Annual Bankruptcy Conference

Atlanta, Georgia ~ April 23-25, 2009

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COMMERCIAL AND CONSUMER CASES**

*Presentation by Hon. Margaret Cangilos-Ruiz*

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**I. Introduction**

Once a proof of claim has been filed,<sup>1</sup> the claim is deemed allowed unless a party in interest objects.<sup>2</sup> The best preparation for defending against a claim objection is to pay careful attention to the proper filing of the claim in the first instance, including timely filing, the claim form and necessary attachments, and the legal effect of filing. Whether bringing or defending an objection to claim, the practitioner should be cognizant of applicable procedures governing the filing and service of claims objections, the content of omnibus objections and requested relief requiring the filing of an adversary proceeding. These issues, as well as determining the burden of proof in the disposition of claims objections, the effect of a transferred or assigned claim on the claim objection process, the resolution of administrative expense claims, and reconsideration of claims are addressed below.

**II. The Best Defense is a Good Offense—Essential Facts Informing the Filing of Claims**

**A. Timing**

In a chapter 7, chapter 12, or chapter 13 case, a proof of claim generally must be filed within 90 days after the first date set for the meeting of creditors under 11 U.S.C. section 341.<sup>3</sup> However, a proof of claim asserted by a governmental unit must be filed within 180 days of the

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<sup>1</sup> The filing of a proof of claim is governed by 11 U.S.C. § 501 and Fed. R. Bankr. P. 3001–3005.

<sup>2</sup> The allowance of a proof of claim is governed by 11 U.S.C. § 502.

<sup>3</sup> Fed. R. Bankr. P. 3002(c).

order for relief, unless it is for a claim resulting from a tax return filed under 11 U.S.C. section 1308.<sup>4</sup> In the latter case, the governmental claim must be filed by the later of 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return in order to be considered timely.<sup>5</sup> In a chapter 9 or chapter 11 case, the court sets the time within which a proof of claim or interest may be filed.<sup>6</sup> Only those creditors whose claims are not scheduled or are scheduled as disputed, contingent, or unliquidated must file a claim in chapter 9 and chapter 11 cases.<sup>7</sup>

A debtor or trustee may file a proof of claim on behalf of a creditor who fails to timely file up to 30 days after the expiration of the above bar dates.<sup>8</sup> A debtor may have tactical reasons for filing a proof of claim on behalf of a creditor, e.g., to ensure that non-dischargeable debts are reduced by distributions from the bankruptcy estate, or to trigger a proceeding disputing the amount of the claim or seeking a determination of an allowed secured claim.<sup>9</sup>

There are several exceptions to the bar date for filing a proof of claim. The court may extend the time for filing by an infant, incompetent person, or representative of the same.<sup>10</sup> An unsecured claim arising as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for recovery of money or property or denies or avoids an entity's interest in property, but the claim will not be allowed if the judgment imposes a liability

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<sup>4</sup> Fed. R. Bankr. P. 3002(c)(1). 11 U.S.C. § 1308 prescribes the time by which a chapter 13 debtor must file outstanding tax returns for all tax periods ending during the four-year period preceding the filing of the petition.

<sup>5</sup> Id.

<sup>6</sup> Fed. R. Bankr. P. 3003(c)(3).

<sup>7</sup> Id. at (c)(2).

<sup>8</sup> Fed. R. Bankr. P. 3004.

<sup>9</sup> 9 Collier on Bankruptcy ¶ 3004.01 (Alan N. Resnick & Henry J. Sommer eds., 15<sup>th</sup> ed. rev. 2008).

<sup>10</sup> Fed. R. Bankr. P. 3002(c)(2).

that is not satisfied or a duty that is not performed.<sup>11</sup> The court may set the time for filing a claim arising from the rejection of an executory contract or unexpired lease.<sup>12</sup> When creditors are given notice of insufficient assets to pay a dividend and the trustee subsequently notifies the court that assets have been identified that will likely result in the payment of a dividend, the clerk must set the time for filing a proof of claim and give creditors at least 90 days' notice.<sup>13</sup> Finally, the court may extend the time for filing a proof of claim by up to 60 days where a creditor at a foreign address was given insufficient notice to reasonably file a proof of claim.<sup>14</sup>

The court may enlarge the time for filing a proof of claim in a chapter 7, 12, or 13 case only under the above exceptions.<sup>15</sup> However, the court may extend the time for filing a proof of claim in a chapter 9 or 11 case “for cause” shown.<sup>16</sup> Prior to the deadline, the creditor must

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<sup>11</sup> Id. at (c)(3). See In re Little, 74 B.R. 625, 627 (Bankr. N.D.N.Y. 1987) (holding that creditor’s proof of claim was timely filed within 30 days in accordance with Fed. R. Bankr. P. 3002(c)(3), when court order avoiding lien was entered on December 1 and became final on December 11, and proof of claim was filed by January 10). However, the claim of a transferee of a voidable transfer will be disallowed if the transferee has not paid the amount, or turned over any property received, as required by the sections under which the transferee is liable. 11 U.S.C. § 502(d); see also In re Davis, 889 F.2d 658, 661 (5<sup>th</sup> Cir. 1989), cert. denied, 495 U.S. 993 (1990) (“The legislative history and policy behind [11 U.S.C. §] 502(d) illustrates that the section is intended to have the coercive effect of insuring compliance with judicial orders.”).

<sup>12</sup> Id. at (c)(4). See In re Montaldo Corp., 209 B.R. 40, 46 (Bankr. M.D.N.C. 1997) (“Although the foregoing language [of Fed. R. Bankr. P. 3002(c)(4)] permits the court to specify a special deadline for the filing of claims arising from the rejection of an executory contract or unexpired lease, there is no requirement that such specialized orders be entered.”) (citing Liakas v. Creditors’ Comm. of Déjà Vu, Inc., 780 F.2d 176, 178 (1<sup>st</sup> Cir. 1986)).

<sup>13</sup> Id. at (c)(5).

<sup>14</sup> Id. at (c)(6).

<sup>15</sup> Fed. R. Bankr. P. 9006(b)(3). See also In re Jensen, 333 B.R. 906, 909 (Bankr. M.D. Fla. 2005) (“[Fed. R. Bankr. P.] 9006(b)(3) prohibits enlargement of the bar date other than as permitted by [Fed. R. Bankr. P.] 3002(c)”); but see In re Jewelart, Inc., 71 B.R. 968, 971 n.4 (Bankr. C.D. Cal. 1987) (court specially set bar date other than date provided under Fed. R. Bankr. P. 3002(c)); In re Unroe, 937 F.2d 346, 350 (7<sup>th</sup> Cir. 1991) (leaving open the question of whether a judge in equity could permit an entirely new claim to be filed after bar date).

<sup>16</sup> Fed. R. Bankr. P. 3003(c)(3).

show why the deadline cannot be met.<sup>17</sup> After the deadline, the creditor must show “excusable neglect,” which the Supreme Court of the United States addressed in Pioneer Investment Services Company v. Brunswick Associates Limited Partnership.<sup>18</sup> In Pioneer, the Supreme Court found that the determination was an equitable one, taking into account all relevant circumstances, including: 1) the danger of prejudice to the debtor; 2) the length of the delay and its potential impact on judicial proceedings; 3) the reason for the delay, including whether it was within the reasonable control of the movant; and 4) whether the movant acted in good faith.<sup>19</sup> Since Pioneer, courts have held that excusable neglect does not include mistake of law<sup>20</sup> or clerical or office problems,<sup>21</sup> but courts have found excusable neglect when the failure to timely file was due to counsel’s exploration of settlement,<sup>22</sup> observance of a religious holiday,<sup>23</sup> or illness.<sup>24</sup>

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<sup>17</sup> 9 Collier on Bankruptcy ¶ 3003.03[4][b].

<sup>18</sup> Pioneer Inv. Servs. Co. v. Brunswick Assocs. P’ship, 507 U.S. 380 (1993).

<sup>19</sup> Id. at 395.

<sup>20</sup> Artificial Intelligence Corp. v. Casey (In re Casey), 198 B.R. 918, 924–25 (Bankr. S.D. Cal. 1996) (“Ignorance of the law or Federal Rules, or mistakes in their construction, do not usually constitute excusable neglect.”).

<sup>21</sup> Schmidt v. Boggs (In re Boggs), 246 B.R. 265, 268 (B.A.P. 6th Cir. 2000) (“‘Clerical or office problems’ are simply not a sufficient excuse for failing to file a notice of appeal within the ten day period.”).

<sup>22</sup> Jones Truck Lines v. Foster’s Truck & Equip. Sales (In re Jones Truck Lines), 63 F.3d 685 (8th Cir. 1995).

<sup>23</sup> Finger v. County of Sullivan (In re Paramount Hotel Corp.), 319 B.R. 350 (Bankr. S.D.N.Y. 2005).

<sup>24</sup> Allied Domecq Retailing USA v. Schultz (In re Schultz), 254 B.R. 149, 154 (B.A.P. 6th Cir. 2000) (“[E]xcusable neglect includes sudden death, disability or illness of counsel or the party.”); cf. Jackson v. President Casinos, Inc. (In re President Casinos, Inc.), 2008 Bankr. LEXIS 3107, \*10–11 (B.A.P. 8th Cir. 2008) (“[I]llness of counsel may be sufficient for a finding of excusable neglect, but the illness must be of ‘such character and magnitude that counsel was both physically and mentally incapacitated during the crucial period of time.’”) (quoting In re Gehl, 324 B.R. 756, 759 (Bankr. N.D. Iowa 2005)).

An Amendment to a timely-filed proof of claim will relate back to the original filing date.<sup>25</sup> However, a nexus must exist between the original proof of claim and the amendment, because courts scrutinize such amendments to ensure that a new claim is not being made.<sup>26</sup> This “nexus” text requires that amendment be allowed “where its purpose is to cure a defect, provide a more particular description of the claim, or plead a new theory of recovery based upon facts stated in the original claim.”<sup>27</sup>

In order to alleviate the harsh results of strict enforcement of the bar date, courts have developed the equitable doctrine of the “informal proof of claim.”<sup>28</sup> To qualify as an informal proof of claim, many courts have held that a document must be in writing, must contain a demand by the creditor on the estate, must express an intent to hold the debtor liable for the debt, and must be filed with the bankruptcy court, and further that the facts of the case must make allowance equitable.<sup>29</sup> Thus, documents such as a complaint initiating an adversary proceeding have been deemed informal proofs of claim,<sup>30</sup> which may be amended at the court’s discretion.<sup>31</sup>

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<sup>25</sup> But see In re Carraway Methodist Health Sys., 2008 Bankr. LEXIS 2108 (Bankr. N.D. Ala. July 23, 2008) (where court allowed creditors to file claims relating to the debtors’ rejection of unexpired leases and executory contracts, creditor filed claim prior to bar date that was then disallowed, and creditor subsequently filed two additional claims, court found that the additional claims were untimely and did not amend the earlier claim, as there was nothing left to amend once the earlier claim was disallowed).

<sup>26</sup> Clamp-All Corp. v. Foresta (In re Clamp-All Corp.), 235 B.R. 137, 140 (B.A.P. 1st Cir. 1999) (“Post-bar date amendments should be scrutinized to ensure that the amendment is not making a new claim against the estate.”).

<sup>27</sup> Id. (citing In re International Horizons, 751 F.2d 1213, 1216 (11<sup>th</sup> Cir. 1985)).

<sup>28</sup> Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.), 190 B.R. 185, 187 (Bankr. S.D.N.Y. 1995) (“The informal proof of claim is an equitable principle developed by courts to alleviate the harsh results of strict enforcement of the bar date.”) (citing In re Mother Hubbard, Inc., 152 Bankr. 189, 192 (Bankr. W.D. Mich. 1993)).

<sup>29</sup> 9 Collier on Bankruptcy ¶ 3001.05[2] and n.33 (collecting cases).

<sup>30</sup> In re Sherret, 58 B.R. 750, 751 (Bankr. W.D. La. 1986).

<sup>31</sup> In re Sambo’s Restaurants, Inc., 754 F.2d 811, 817 (9th Cir. 1985).

## **B. Proof of Claim Form**

A proof of claim is a written statement setting forth a creditor's claim, and should conform substantially to Official Form No. 10.<sup>32</sup> Attachments documenting the claim should be included when required to properly establish the right to payment. When a claim is based on a writing, a copy of the writing should be filed with the proof of claim unless the writing has been lost or destroyed, in which case a statement of the circumstances of the loss or destruction should be filed with the proof of claim.<sup>33</sup> When a claim is for a security interest in property of the debtor, evidence that the security interest has been perfected should be filed with the proof of claim.<sup>34</sup> Documentation should also be filed with the proof of claim explaining how components of the claim, such as interest and fees were computed, as should any evidence in support of additional costs. To the extent that such documentation is filed with the proof of claim, the practitioner may be able to avert objections to the claim.<sup>35</sup>

## **C. Legal Effect**

The Seventh Amendment of the United States Constitution preserves the right to a jury trial for actions at common law concerning a private right, where the amount in controversy

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<sup>32</sup> Fed. R. Bankr. P. 3001(a); see also Official Form No. 10 (2008).

<sup>33</sup> Id. at (c).

<sup>34</sup> Id. at (d).

<sup>35</sup> For example, a credit card company in response to an objection to its claim may need to supply more than the one-page summary of the account history attached to the claim. The court in In re Plourde found that although the company may find it burdensome, it was required to provide details of the charges and interest imposed in responding to the trustee's objection and, failing to do so, the court sustained the objection. In re Plourde, 397 B.R. 207, 226 (Bankr. D.N.H. 2008) ("The need to provide details on the terms and conditions of the contract, and the actual charges and interest imposed, from time to time may be onerous from the credit card [issuers'] point of view. However, such difficulties flow from the business model that the credit card industry has voluntarily adopted. So long as credit card issuers wish to maintain sole discretion to vary the terms of their agreement with a consumer at any time, and from time to time, they must accept the legal consequences of that business model.").

exceeds twenty dollars.<sup>36</sup> To determine whether a claimant is entitled to a jury trial, the court must determine whether the action and remedy sought are legal or equitable.<sup>37</sup> A claimant does not have a right to jury trial in cases “involving statutory rights that are integral parts of a public regulatory scheme and whose adjudication Congress has assigned to . . . a specialized court of equity,” because those rights are deemed ‘public.’<sup>38</sup> If a claimant’s action is inextricably intertwined with a statutory public right, such as an action for the allowance of claims, then the party does not have a Seventh Amendment right to jury trial.<sup>39</sup> The filing of a proof of claim is the prototypical situation involving the allowance or disallowance of claims, which is a core proceeding under 28 U.S.C. § 157(b)(2)(B).<sup>40</sup> By filing a proof of claim, a creditor triggers the process of “allowance and disallowance of claims,” and thereby subjects herself to the equitable power of the bankruptcy court.<sup>41</sup> A creditor may waive the right to jury trial by filing a proof of claim even when she attempts to reserve the right.<sup>42</sup> Apart from entitlement to a jury trial, the filing of a claim may subject an entity to the jurisdiction of the court for purposes of any and all counterclaims that the debtor may assert against the claimant.<sup>43</sup>

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<sup>36</sup> Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 41 (1989).

<sup>37</sup> Id. at 42.

<sup>38</sup> MCI WorldCom Communs., Inc. v. Communs. Network Int’l, Ltd. (In re WorldCom, Inc.), 378 B.R. 745, 751 (Bankr. S.D.N.Y. 2007) (quoting Germain v. Connecticut Nat’l Bank, 988 F.2d 1323, 1331 (2d Cir. 1993)).

<sup>39</sup> Id. at 752.

<sup>40</sup> Durkin v. Benedor Corp. (In re G.I. Indus.), 204 F.3d 1276, 1279–80 (9th Cir. 2000).

<sup>41</sup> Langenkamp v. Culp, 498 U.S. 42, 44 (1990) (quoting Granfinanciera, 492 U.S. at 58–59, n.14). See also In re S.G. Phillips Constructors, Inc., 45 F.3d 702, 704–08 (2<sup>d</sup> Cir. 1995).

<sup>42</sup> Anderson v. Brokers, Inc. (In re Brokers, Inc.), 2005 Bankr. LEXIS 1100, \*8 (Bankr. M.D.N.C. June 6, 2005) (“The filing of a proof of claim may waive a creditor’s right to a jury trial even when the creditor attempts to reserve its right to a jury trial.”) (citing Travellers Int’l AG v. Robinson, 982 F.2d 96, 100 (3d Cir. 1992); Granader v. Peachtree Lane Assocs. (In re Peachtree Lane Assocs.), 150 F.3d 788, 799 (7th Cir. 1998)).

<sup>43</sup> 28 U.S.C. § 157(b)(2)(C).

A governmental unit that has filed a proof of claim is deemed to have waived sovereign immunity with respect to any claim against the governmental unit that 1) is property of the estate and 2) arose out of the same transaction or occurrence as the governmental unit's claim.<sup>44</sup> Further, any claim by a governmental unit is offset by any claim against the governmental unit that is property of the estate.<sup>45</sup>

Of course, when a filing is required, if a discharge is ultimately entered or the debt is not otherwise excepted from discharge, a subsequent affirmative recovery from the debtor is barred. Furthermore, the non-filing party does not share in a distribution from the estate and one's status as an included member of a certified class is adversely impacted. In an action asserted by former employees of a chapter 11 debtor under the Worker Adjustment Retraining Notification Act ("WARN Act"),<sup>46</sup> the court in In re Protected Vehicles used a modified class action model, consonant with principles of equal treatment of claims in bankruptcy, to limit the certified class only to members who had timely filed proofs of claim prior to the bar date.<sup>47</sup>

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<sup>44</sup> 11 U.S.C. § 106(b). See also Schulman v. California (In re Lazar), 237 F.3d 967, 978 (9th Cir. 2001), cert. denied, 534 U.S. 992 (2001) (finding that, by filing a proof of claim, a state waives its Eleventh Amendment immunity with respect to the bankruptcy estate's claims that arise from the same transaction or occurrence as the state's claim).

<sup>45</sup> Id. at (c). Any concerns about the constitutionality of § 106(b) and (c) have been laid to rest the Supreme Court's conclusion that the "States agreed in the plan of the Convention not to assert any sovereign immunity defense they might have had in proceedings brought pursuant to 'Laws on the subject of Bankruptcies.'" Cent. Va. Cmty. Coll. v. Katz, 546 U.S. 356, 377 (2006).

<sup>46</sup> 29 U.S.C. § 2101 et seq.

<sup>47</sup> In re Protected Vehicles, Inc., 397 B.R. 339 (Bankr. D.S.C. 2008).

### III. Filing and Service of Claims Objections

#### A. Timing

There is no per se bar date for filing claims objections,<sup>48</sup> although the court may always set a bar date.<sup>49</sup> However, some courts in chapter 13 cases have found that when a proof of claim was filed prior to confirmation of a chapter 13 plan, an objection to that claim must also be filed prior to confirmation.<sup>50</sup> Other courts have permitted post-confirmation objections to claims in chapter 13 cases.<sup>51</sup>

#### B. Filing Omnibus Objections

Fed. R. Bankr. P. 3007 was amended in 2007 to restrict the use of omnibus objections in order to ensure the protection of claimants' due process rights.<sup>52</sup> Under the revised rule, claims objections may only be joined in a single omnibus objection by court order, or if the objection is

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<sup>48</sup> In re Herrera v. JPMorgan Chase Bank, N.A., 369 B.R. 395, 400 (E.D. Wis. 2007) (“[Fed. R. Bankr. P.] 3007 sets no bar date for objections.”) (citing In re Kolstad, 928 F.2d 171, 174 (5th Cir. 1991), cert. denied, 502 U.S. 958 (1991); In re Consolidated Pioneer Mortgage, 178 B.R. 222, 225 (B.A.P. 9th Cir. 1995), aff’d, 91 F.3d 151 (9th Cir. 1996)).

<sup>49</sup> Id. (“The bankruptcy court may set deadlines for filing objections.”) (citing In re Hovis, 356 F.3d 820, 822 (7th Cir. 2004)).

<sup>50</sup> See Universal Am. Mortgage Co. v. Bateman (In re Bateman), 331 F.3d 821 (11th Cir. 2003) (“Although [11 U.S.C.] § 502(a) does not provide a time limit to file an objection, it must be filed *prior* to plan confirmation.”) (citing In re Justice Oaks II, Ltd., 898 F.2d 1544, 1553 (11th Cir. 1990), cert. denied, 498 U.S. 959 (1990); In re Starling, 251 B.R. 908, 909–10 (Bankr. S.D. Fla. 2000)) (emphasis in original).

<sup>51</sup> See Morton v. Morton (In re Morton), 298 B.R. 301, 309–10 (B.A.P. 6th Cir. 2003) (“Neither the Bankruptcy Code nor the Bankruptcy Rules contain a bar date or deadline for filing objections to claims in a chapter 13 case and we will not read one into the law where none exists.”).

<sup>52</sup> Fed. R. Bankr. P. 3007 Notes of Advisory Committee on 2007 Amendment. Prior to 2007 amendment, courts applied the doctrine of excusable neglect to reconsider claims of creditors that had been expunged due to failure to respond to an omnibus objection. See Pro-Tec Servs., LLC v. Inacom Corp. (In re Inacom Corp.), 2004 U.S. Dist. Lexis 20822 (D. Del. Oct. 4, 2004) (finding excusable neglect through application of Pioneer factors); In re Enron, 325 B.R. 114 (Bankr. S.D.N.Y. 2005) (finding excusable neglect where inaction was based upon the erroneous assumption that the debtors would not file a formal objection to claim while engaged in negotiations regarding claim). See also supra Part II.A.

based solely on the grounds that the claims: 1) are duplicative; 2) were filed in the wrong case; 3) have been amended by subsequent proofs of claim; 4) were not timely filed; 5) have been satisfied or released; 6) were presented in a form that does not comply with applicable rules and the objector is unable to determine the claim's validity due to noncompliance; 7) are interests rather than claims; or 8) assert priority in amounts in excess of the maximum allowed under 11 U.S.C. section 507.<sup>53</sup> To ensure notice to the claimant, omnibus objections must also: 1) state conspicuously that claimants receiving the objection should locate their names and claims in the objection; 2) list claimants alphabetically, cross-reference claim numbers, and list claimants by category of claims if appropriate; 3) state the grounds of objection to each claim and cross-reference pertinent pages in the objection; 4) state in the title the identity of the objector and grounds for objection; 5) be numbered consecutively with other omnibus objections filed by the same objector; and 6) contain objections to no more than 100 claims.<sup>54</sup> Since omnibus objections may be allowed as “otherwise ordered by the court,”<sup>55</sup> familiarity with local bankruptcy rules and general orders is important, as they may deviate from the federal requirements regarding the filing of omnibus objections.<sup>56</sup>

### **C. Service**

An objection to the allowance of a claim must be served with 30 days' notice of the hearing.<sup>57</sup> Although Fed. R. Bankr. P. 3007 does not expressly provide the manner for service of claims objections, many authorities agree that claims objections are contested matters governed

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<sup>53</sup> Fed. R. Bankr. P. 3007(c)–(d).

<sup>54</sup> Id. at (e).

<sup>55</sup> Id. at (c).

<sup>56</sup> See D. Del. Rev. Local Bankr. R. 3007-1 (effective Feb. 1, 2009) (App. infra Part V); see also General Order Regarding Applicability of Rule 3007(c) of the Amended Federal Rules of Bankruptcy Procedure (Bankr. D. Del. Nov. 27, 2007) (deviating from Fed. R. Bankr. P. 3007 and specifying additional requirements for the filing of omnibus objections).

<sup>57</sup> Fed. R. Bankr. P. 3007(a).

by Fed. R. Bankr. P. 9014.<sup>58</sup> In general, service of a motion in a contested matter must comply with the service requirements of Fed. R. Bankr. P. 7004.<sup>59</sup> However, courts are split as to whether service of a claim objection on the address listed by the creditor on the proof of claim is sufficient, even if that service would not normally satisfy Fed. R. Bankr. P. 7004.<sup>60</sup>

Beneath the service requirement is a general concern for due process. The requirements of due process are satisfied so long as a defendant has been served in a manner “reasonably calculated to give him actual notice of the proceedings.”<sup>61</sup> Therefore, if the claimant responds to the objection, the manner of service is of less concern than if there is no response. For this reason, it is good practice to serve in accordance with Fed. R. Bankr. P. 7004 and on the proof of claim address. As with the filing of omnibus objections, familiarity with applicable local bankruptcy rules is important because such rules may specify different or additional requirements for the proper service of claims objections.<sup>62</sup> Proper service of the objection will

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<sup>58</sup> See In re Lomas Fin. Corp., 212 B.R. 46, 52 (Bankr. D. Del. 1997) (“Most authorities agree that claim[s] objections are contested matters.”) (quoting United States v. Levoy (In re Levoy), 182 B.R. 827, 834 (B.A.P. 9<sup>th</sup> Cir. 1995)).

<sup>59</sup> Fed. R. Bankr. P. 9014(b) (incorporating Fed. R. Bankr. P. 7004).

<sup>60</sup> See In re Cagle, 2008 Bankr. LEXIS 2094, \*7–12 (Bankr. N.D. Ga. Jun. 2, 2008) (collecting cases). See also In re Outlet Dep’t Stores, Inc., 49 B.R. 536, 540 (Bankr. S.D.N.Y. 1985) (“Given that [the creditor] in its proof of claim provided this address to the trustee, it cannot now claim that service of process at that address was either defective or violative of [the creditor’s] rights.”); but see In re Sunde, 2007 Bankr. LEXIS 3704, \*6 (Bankr. W.D. Wis. Oct. 2, 2007) (“[Fed. R. Bankr. P.] 7004(b)(3) expressly requires that service be addressed to the attention of ‘an officer, [or] agent’ of the business. The court is not persuaded that the plain language of [Fed. R. Bankr. P.] 7004(b)(3) should be overridden simply because the [c]reditor failed to provide a proper address for service on its proof of claim form.”).

<sup>61</sup> In re Outlet Dep’t Stores, Inc., 49 B.R. at 540 (quoting Hackner v. Guaranty Trust Co., 117 F.2d 95, 98 (2<sup>d</sup> Cir. 1941), cert. denied, 313 U.S. 559 (1941)).

<sup>62</sup> See D. Md. Rev. Local Bankr. R. 3007-1 (2008) (“In addition to the service required by [Fed. R. Bankr. P.] 9014 and 7004(b), a party objecting to a proof of claim must serve a copy of the objection and any supporting memorandum and affidavit on the claimant at the address (and in care of the individual) shown on the proof of claim and must certify that service to the court.”).

be a defense to a later motion for reconsideration of an order disallowing a claim filed by a claimant who never responded to the objection upon which the order was based.<sup>63</sup>

#### **D. Requested Relief Requiring the Filing of an Adversary Proceeding**

Prior to December 1, 2007, if an objection to a claim was joined with a demand for relief of the kind specified in Fed. R. Bankr. P. 7001,<sup>64</sup> it would be automatically converted to an adversary proceeding.<sup>65</sup> New subsection (b) of Fed. R. Bankr. P. 3007 does not allow a party in interest to include such a demand for relief in a claim objection, but rather requires the filing of an adversary proceeding that may include a claim objection.<sup>66</sup> As amended, the Rule allows a party to object to a claim separately from a related adversary proceeding, although the court may consolidate the hearing on the objection with the trial of the adversary proceeding under Fed. R. Bankr. P. 7042.<sup>67</sup> A claim objection that includes a demand for relief of the kind specified in

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<sup>63</sup> See *infra* Part IV.D.

<sup>64</sup> Fed R. Bankr. P. 7001 specifies that the following are adversary proceedings: 1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under 11 U.S.C. § 554(b) or § 725, Fed. R. Bankr. P 2017, or Fed. R. Bankr. P 6002; 2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Fed. R. Bankr. P 4003(d); 3) a proceeding to obtain approval under 11 U.S.C. § 363(h) for the sale of both the interest of the estate and of a co-owner in property; 4) a proceeding to object to or revoke a discharge; 5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan; 6) a proceeding to determine the dischargeability of a debt; 7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief; 8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination; 9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or 10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

<sup>65</sup> Fed. R. Bankr. P. 3007 (amended Dec. 1, 2007) (“If an objection to a claim is joined with a demand for relief of the kind specified in [Fed. R. Bankr. P.] 7001, it becomes an adversary proceeding.”).

<sup>66</sup> Fed. R. Bankr. P. 3007(b) (effective Dec. 1, 2007) (“A party in interest shall not include a demand for relief of a kind specified in [Fed. R. Bankr. P.] 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.”).

<sup>67</sup> Fed. R. Bankr. P. 3007 Notes of Advisory Committee on 2007 Amendment.

Fed. R. Bankr. P. 7001 may be subject to dismissal.<sup>68</sup> Adversary proceedings afford defendants greater due process. Allowing a plaintiff in an adversary proceeding to assert a claim objection would not unfairly surprise the defendant, as might be the case if the matter was framed as a contested matter, but included a demand for relief of the kind specified in Fed. R. Bankr. P. 7001.<sup>69</sup>

#### **IV. Disposition of Claims Objections**

##### **A. Burden of Proof**

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of the claim.<sup>70</sup> The burden then shifts to the objecting party to produce evidence sufficient to rebut the prima facie validity of the claim.<sup>71</sup> Once the objecting party introduces evidence sufficient to overcome the prima facie validity of the claim, the claimant bears the burden of proof to establish the validity of the claim.<sup>72</sup> If a proof of claim lacks the documentation necessary to establish prima facie validity, the claimant may bear the burden of establishing its claim.<sup>73</sup>

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<sup>68</sup> See 9 Collier on Bankruptcy ¶ 3007.02 (“Whether a claim objection which includes a request for affirmative relief against the claimant may be recharacterized by the court as an adversary proceeding, rather than being subject to dismissal in whole or in part, is a more difficult question given the mandatory language of [Fed. R. Bankr. P.] 3007(b). At a minimum, use of the words ‘shall not’ should result in greater caution by practitioners to utilize adversary proceedings when appropriate.”).

<sup>69</sup> Fed. R. Bankr. P. 3007 Notes of Advisory Committee on 2007 Amendment.

<sup>70</sup> Fed. R. Bankr. P. 3001(f).

<sup>71</sup> See In re McLaughlin, 320 B.R. 661, 665 (Bankr. N.D. Ohio 2005) (“To defeat the claim, the objector must come forward with sufficient evidence and ‘show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.’”) (quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9<sup>th</sup> Cir. 1991)); see also In re Allegheny Int’l, Inc., 954 F.2d 167, 173–74 (3<sup>d</sup> Cir. 1992) (“In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim’s legal sufficiency.”).

<sup>72</sup> In re Rockefeller Ctr. Props., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000), *aff’d*, 266 B.R. 52 (S.D.N.Y. 2001), *aff’d*, 46 Fed. Appx. 40 (2<sup>d</sup> Cir. 2002) (“Once an objectant offers sufficient

## B. Effect of Transferred and Assigned Claims on Claims Objections

If a claim other than for security is transferred before a proof of claim is filed, only the transferee or an indenture trustee may file the proof of claim.<sup>74</sup> If a claim other than for security is transferred after the proof of claim has been filed, evidence of the transfer must be filed by the transferee.<sup>75</sup> The court must immediately notify the alleged transferor by mail of the filing of the transfer, and the transferor has 20 days to object to the transfer of the claim or the transferee shall be substituted for the transferor.<sup>76</sup> Although third parties such as the debtor do not have standing to object to claim assignment itself,<sup>77</sup> the bankruptcy court, as a court of equity, will scrutinize a timely, plausible argument that a proof of claim was fraudulently assigned, to avoid shielding fraudulent conduct.<sup>78</sup>

Setoff is unavailable where a claim was transferred from another creditor either after the commencement of the debtor's bankruptcy case,<sup>79</sup> or after 90 days before the date of commencement and while debtor was insolvent.<sup>80</sup> This provision exists to prevent a creditor

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evidence to overcome the prima facie validity of the claim, the claimant is required to meet the usual burden of proof to establish the validity of the claim.”).

<sup>73</sup> See In re Moreno, 341 B.R. 813, 819 (Bankr. S.D. Fla. 2006) (“If the original proof of claim contains only summary information and lacks the documentation necessary under [Fed. R. Bankr. P.] 3001 to establish prima facie validity, the claimant will have the burden of establishing its claim . . . including, for example, providing a breakdown of how it calculated charges such as interest, late fees, or attorneys fees if it is these types of charges which represent the challenged amount.”). See also supra Part II.B.

<sup>74</sup> Fed. R. Bankr. P. 3001(e)(1).

<sup>75</sup> Id. at (e)(2).

<sup>76</sup> Id.

<sup>77</sup> In re Lynn, 285 B.R. 858, 862 (Bankr. S.D.N.Y. 2002) (“[T]hird parties, including the [d]ebtor, do not have standing to object to a claim assignment itself.”) (citing Viking Assocs. v. Drewes (In re Olsen), 120 F.3d 98, 102 (8<sup>th</sup> Cir. 1997)).

<sup>78</sup> Prin Corp. v. Altman (In re Altman), 265 B.R. 652, 658–59 (Bankr. D. Conn. 2001).

<sup>79</sup> 11 U.S.C. § 553(a)(2)(A).

<sup>80</sup> Id. at (a)(2)(B). This provision contains an exception for a setoff of a kind described in 11 U.S.C. §§ 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, and 561.

from acquiring a claim solely for the purpose of avoiding an anticipated claim asserted against her by the debtor.<sup>81</sup>

### C. Administrative Expense Claims

Payment of an administrative expense must be requested pursuant to 11 U.S.C. section 503(a), rather than by the mere filing of a proof of claim.<sup>82</sup> A claimant must give 20 day-notice to all creditors of a hearing on the claimant's request for compensation or reimbursement of expenses that exceeds \$1,000.<sup>83</sup> Administrative expenses, other than for claims allowed under 11 U.S.C. section 502, are allowable for a number of categories of expenses.<sup>84</sup> These allowable expenses generally include all costs and expenses incurred by the bankruptcy estate,<sup>85</sup> including any actual, necessary costs and expenses of preserving the estate.<sup>86</sup> An expense is administrative only where it "arises out of a transaction between the creditor and the bankrupt's trustee or debtor in possession, and only to the extent that the consideration supporting the claimant's right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business."<sup>87</sup>

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<sup>81</sup> See U.S. Aeroteam, Inc. v. Delphi Automotive Systems, LLC (In re United States Aeroteam), 327 B.R. 852, 865–66 (Bankr. S.D. Ohio 2005) ("The drafters of [11 U.S.C.] § 553 acknowledged the concern that creditors might engage in the 'trafficking' of claims in order to create a setoff advantage in bankruptcy. For this reason, Congress enacted § 553(a)(2) . . . [w]ithout such a restriction, creditors indebted to a debtor would have an incentive to purchase claims at a discount following the bankruptcy filing, or during the ninety days prior, in order to reduce their indebtedness through the exercise of acquired setoff rights.").

<sup>82</sup> NL Indus., Inc. v. GHR Energy Corp., 940 F.2d 957, 966 (5th Cir. 1991), cert. denied, 502 U.S. 1032 (1992).

<sup>83</sup> Fed. R. Bankr. P. 2002(a)(6).

<sup>84</sup> 11 U.S.C. § 503(b). This provision provides a nonexhaustive list of allowable administrative expenses. See In re Kadjevich, 220 F.3d 1016, 1019 (9th Cir. 2000).

<sup>85</sup> See 11 U.S.C. § 503(b)(1)–(8).

<sup>86</sup> Id. at (b)(1)(A).

<sup>87</sup> Supplee v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.), 479 F.3d 167, 172 (2d Cir. 2007) (quoting Trustees of the Amalgamated Ins. Fund v. McFarlin's, Inc., 789 F.2d 98, 101 (2d Cir. 1986)).

Administrative expense claims have been approved for unpaid postpetition rent on behalf of a commercial landlord, when the claim was for an actual, necessary cost and expense of preserving the estate.<sup>88</sup> However, the payment of postpetition rent under this provision need not be made immediately; rather, the timing of payment is left to the discretion of the court.<sup>89</sup>

Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), allowable administrative expenses also include wages and benefits awarded pursuant to a judicial or National Labor Relations Board proceeding as back pay.<sup>90</sup> However, expenses requested pursuant to the WARN Act by employees terminated prepetition have been denied, on the grounds that 1) employees seeking administrative claim status must have been employed by the debtor postpetition,<sup>91</sup> and 2) an award pursuant to the WARN Act must be made by a court of general jurisdiction, and a bankruptcy court, as a court of limited jurisdiction, may not make such an award.<sup>92</sup>

Further, under the BAPCPA, allowable administrative expenses include the value of goods received by the debtor up to 20 days before the commencement of the bankruptcy case, when the goods were sold to the debtor in the ordinary course of the debtor’s business.<sup>93</sup>

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<sup>88</sup> In re Goody’s Family Clothing, Inc., 392 B.R. 604, 607, 609–14 (Bankr. D. Del. 2008) (finding that 11 U.S.C. § 365(d)(3) and (b)(1)(A) were not the sole bases for approving a claim for postpetition rent, and approving administrative claim for unpaid rent pursuant to 11 U.S.C. § 503(b)(1)(A) where the claim was for an actual, necessary cost of preserving the bankruptcy estate).

<sup>89</sup> Id. at 607, 614-18 (finding that an administrative expense claim under 11 U.S.C. § 503(b)(1) for postpetition rent need not be timely paid under 11 U.S.C. § 365(d)(3) and denying request for immediate payment).

<sup>90</sup> 11 U.S.C. § 503(b)(1)(A)(ii); see also 11 U.S.C. § 503 Comment on 2005 Amendment.

<sup>91</sup> In re First Magnus Fin. Corp., 390 B.R. 667, 677 (Bankr. D. Ariz. 2008); see also Henderson v. Powermate Holding Corp. (In re Powermate Holding Corp.), 394 B.R. 765, 778 (Bankr. D. Del. 2008) (“[W]hether a WARN Act claim is an administrative expense depends on whether the termination without notice occurred pre or post-petition.”).

<sup>92</sup> In re First Magnus Fin. Corp., 390 B.R. at 678.

<sup>93</sup> 11 U.S.C. § 503(b)(9); see also 11 U.S.C. § 503 Comment on 2005 Amendment.

Pursuant to this provision, a seller who wishes to reclaim goods sold, but who fails to make a written demand for reclamation within the time provided by 11 U.S.C. § 546(c)(1), may nonetheless assert a right to an administrative expense.<sup>94</sup> However, requests for immediate payment of claims under this provision have been denied when the claims far exceeded the debtor company's ability to borrow, the debtor did not then have funds available to make the payments, and the debtor's reorganization efforts would collapse if required to immediately pay.<sup>95</sup>

#### **D. Reconsideration of Claims**

Unlike Fed. R. Bankr. P. 9023, which requires that motions for a new trial or to alter or amend a judgment be served within 10 days of the entry of the judgment, there is no time limit for the reconsideration of claims under Fed. R. Bankr. P. 3008.<sup>96</sup> Fed. R. Bankr. P. 9024, which incorporates Fed. R. Civ. P. 60, excepts from its one-year limitations period the reconsideration of an order entered without contest allowing or disallowing a claim.<sup>97</sup> However, the passage of a significant amount of time may work against the moving party.<sup>98</sup> A claim that has been allowed or disallowed may be reconsidered "for cause" shown, and a reconsidered claim may be allowed or disallowed based on the equities of the case.<sup>99</sup> When parties have litigated an objection to a

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<sup>94</sup> See Brown & Cole Stores, LLC v. Associated Grocers, Inc. (In re Brown & Cole Stores, LLC), 375 B.R. 873, 875n.3 (B.A.P. 9<sup>th</sup> Cir. 2007) ("The legislative history of [11 U.S.C.] § 503(b)(9) 'suggests that it was aimed at providing relief to sellers of goods who fail to give the required notice under the reclamation provision of [11 U.S.C. §] 546(c).'" (quoting Shirley S. Cho, *The Intersection of Critical Vendor Orders and Bankruptcy Code § 503(b)(9)*, 29 Cal. Bankr. J. 7, 11 (2007)).

<sup>95</sup> In re Global Home Prods., LLC, 2006 Bankr. LEXIS 3608, \*12-13, \*16 (Bankr. D. Del. Dec. 21, 2006).

<sup>96</sup> Fed. R. Bankr. P. 9023 Notes of Advisory Committee.

<sup>97</sup> Fed. R. Bankr. P. 9024.

<sup>98</sup> See In re Cassell, 206 B.R. 853, 856 (Bankr. W.D. Va. 1997).

<sup>99</sup> 11 U.S.C. § 502(j). See also In re Zeider, 263 B.R. 114, 117 (Bankr. D. Ariz. 2001) ("[11 U.S.C. §] 502(j) permits reconsideration of claims 'according to the equities of the case.'").

proof of claim, courts “may provide relief from judgment based on such things as mistake, newly discovered evidence, fraud, a void or satisfied judgment or any other similar reason justifying relief.”<sup>100</sup> When a proof of claim was instead deemed allowed by a confirmed plan without objection, courts have established cause for reconsideration based on the following factors: 1) the extent and reasonableness of the delay; 2) the prejudice to any party in interest; 3) the effect on efficient court administration; and 4) the moving party’s good faith.<sup>101</sup>

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<sup>100</sup> In re Gomez, 250 B.R. 397, 401 (Bankr. M.D. Fla. 1999).

<sup>101</sup> Id. (citing In re Bernard, 189 B.R. 1017, 1022 (Bankr. N.D. Ga. 1996)).

V. **Appendix: Local Bankruptcy Rule 3007-1, D. Del.**

**Rule 3007-1 Omnibus Objection to Claims.** (Effective February 1, 2009)

- (a) Scope of Rule. This Local Rule applies to any objection to the allowance of a claim under an omnibus objection (*i.e.*, an objection to claims asserted by more than one claimant) (“Objection”). To the extent of any inconsistency between this Local Rule and Fed. R. Bankr. P. 3007, this Local Rule governs omnibus objections to claims.
- (b) Effect of Rule. In addition to complying with those sections of the Code and those rules of the Fed. R. Bankr. P. generally applicable to an objection to the allowance of a claim, any Objection shall comply with the information and certification requirements listed in Local Rule 3007-1(c)-(f).
- (c) Filed v. Scheduled Claim. If a claim has been scheduled on the debtor’s schedules of liabilities and is not listed as disputed, contingent or unliquidated and a proof of claim has not been filed under Fed. R. Bankr. P. 3003, 3004 and/or 3005, the debtor may not object to the claim. Instead, the debtor must amend the schedules under Fed. R. Bankr. P. 1009 and provide notice as required by Local Rule 1009-2.
- (d) Substantive v. Non-Substantive Objections. An Objection is deemed to be on a substantive basis unless it is based on one or more of the following:
  - (i) A duplicate claim; provided, however, that a claim filed against two different debtors is not a duplicate claim unless the cases have been substantively consolidated by order of the Court;
  - (ii) A claim filed in the wrong case;
  - (iii) An amended or superseded claim;
  - (iv) A late filed claim;
  - (v) A claim filed by a shareholder based on ownership of stock; provided, however, that an Objection with respect to a claim filed by a shareholder for damages shall be deemed a substantive Objection;
  - (vi) A claim that does not have a basis in the debtor’s books and records and does not include or attach sufficient information or documentation to constitute prima facie evidence of the validity and amount of the claim, as contemplated by Fed. R. Bankr. P. 3001(f); provided, however, that if the Court determines that the claim attaches or includes sufficient information or documentation and is otherwise in compliance with applicable rules, then the Objection shall be deemed substantive. Any Objection under this subsection must be supported by an affidavit or declaration that states that affiant or declarant has reviewed the claim and all supporting information and documentation provided therewith, made reasonable

efforts to research the claim on the debtor's books and records and believes such documentation does not provide prima facie evidence of the validity and amount of the claim;

- (vii) A claim that is objectionable under 11 U.S.C. § 502(e)(1);
  - (viii) Incorrect classification of a claim; provided, however, that an Objection based on incorrect classification of a claim (A) is separately filed, (B) provides in its title (or otherwise conspicuously states) that substantive rights may be affected by this Objection and by any further Objection that may be filed and (C) otherwise complies with these Local Rules;
  - (ix) A claim that has been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;
  - (x) A claim for priority in an amount that exceeds the maximum amount under 11 U.S.C. § 507 of the Code; and
  - (xi) A claim that asserts an interest in property of the debtor that does not comply with the requirements of Fed. R. Bankr. P. 3001(c) or (d).
- (e) General Requirements for Objections.
- (i) Objection. Each Objection shall conform to the following requirements:
    - (A) Each Objection shall be filed as either substantive or non-substantive, but not both. A particular claim may be subject to both a substantive and a non-substantive Objection;
    - (B) The title of the Objection shall clearly state whether the Objection is on substantive or non-substantive grounds;
    - (C) Objections shall be numbered consecutively regardless of basis, i.e., 1<sup>st</sup> Omnibus (duplicate), 2<sup>nd</sup> Omnibus (amended and superceded); not 1<sup>st</sup> Omnibus (duplicate), 1<sup>st</sup> Omnibus (amended and superceded);
    - (D) Exhibit(s) of claims to which the Objection relates, which exhibit(s) shall be consistent with Local Rule 3007-1(e)(iii) and must be attached to the Objection; and
    - (E) The Objection shall also contain a statement by the objector or the objector's counsel that the Objection complies with this Local Rule.
  - (ii) Affidavit of Declaration. If an affidavit or declaration is filed in support of the Objection, it shall state that the information contained in the exhibit is true and correct to the best of the affiant's or declarant's knowledge and belief.

(iii) Exhibits.

(A) Each exhibit attached to an Objection shall include, at a minimum, the information identified in the following table, with such information entered in the respective boxes as appropriate:

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	(4) Reason for Disallowance

(B) Each exhibit shall contain only those claims to which there is one common basis for objection (e.g., exhibit A duplicate claims; exhibit B amended or superseded claims).

(C) A claim for which there are two or more bases for objection (e.g., a claim that is both duplicative and late filed) shall be referenced on each applicable exhibit.

(D) Each exhibit shall have the claims listed alphabetically by the last name of the claimant (in the case of an individual) or the name of the entity (in the case of a corporation, partnership, limited liability company, etc.).

(E) If an Objection seeks to reduce the amount of a claim, a column shall be added between columns (3) and (4) titled “Modified Claim Amount” and column (4) shall be changed from “Reason for Disallowance” to “Reason for Modification.”

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	Modified Claim Amount	(4) Reason for Modification

(F) If an Objection seeks to change the classification of a claim, two columns shall be added between columns (3) and (4) titled “Claim Classification Status” and “Modified Classification Status” and column (4) shall be changed from “Reason for Disallowance” to “Reason for Reclassification.”

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	Claim Classification Status	Modified Classification Status	(4) Reason for Reclassification

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- (G) If an Objection seeks to change the priority of a claim, two columns shall be added between columns (3) and (4) titled “Claim Priority Status” and “Modified Priority Status” and column (4) shall be changed from “Reason for Disallowance” to “Reason for Modification.”

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	Claim Priority Status	Modified Priority Status	(4) Reason for Modification

- (H) If an Objection seeks to expunge amended or duplicate claims, the title of column (2) shall be changed from “Claim Number” to “Remaining Claim Number” and a column shall be added between columns (2) and (3) titled “Duplicate or Amended Claim to be Expunged.”

(1) Name of Claimant	(2) Remaining Claim Number	Duplicate or Amended Claim to be Expunged	(3) Claim Amount	(4) Reason for Disallowance

- (I) If an Objection seeks to expunge late filed claims, a column shall be added between columns (1) and (2) titled “Date Claim Filed.”

(1) Name of Claimant	Date Claim Filed	(2) Claim Number	(3) Claim Amount	(4) Reason for Disallowance

- (J) Where the Objection is based on substantive grounds, the exhibit must include a claim-specific declaration in the column titled “Reason for Disallowance” giving sufficient detail as to why the claim should be disallowed. The following are examples of “sufficient detail” necessary to sustain an Objection on a substantive basis:

- (1) If the claim is against a non-debtor entity, then the non-debtor entity must be identified;
- (2) If the claim has been paid or satisfied prepetition (not postpetition), then the check number and the date the check was issued must be identified. (An objection to a claim on the basis that the claim has

been paid or satisfied postpetition is not a valid objection); and

- (3) If the claim includes a postpetition claim, then the date the postpetition claim arose must be identified.
- (iv) Proofs of Claim. If the Objection is non-substantive, then copies of the proofs of claim need not be provided to the Court, except that proofs of claim relating to an Objection based on Local Rule 3007-1(d)(vi) (i.e., a claim without any supporting documents) shall be provided to the Court as set forth in Local Rule 3007-1(e)(iv)(A)-(C). When the Objection is substantive, a copy of the proofs of claim and all supporting documentation shall be provided to the Court as follows:
  - (A) Proofs of claim shall be in a binder and separated by tabs;
  - (B) Proofs of claim shall be in the order as listed in the exhibit(s), with additional tabs indicating to which exhibit the claims relate; and
  - (C) At least two (2) weeks before the hearing on the Objection, a Notice of Submission of Proofs of Claim is to be filed and delivered to the respective Judge's chambers with copies of the claims (with all attachments) along with the Objection to those claims. The Notice of Submission of Proofs of Claim stating that the claims have been delivered to chambers and that copies can be requested from objector's counsel shall be served upon all parties requesting notice under Fed. R. Bankr. P. 2002.
- (v) Notice of Objection to Claim Holder. Each claim holder whose rights are affected by an Objection shall receive a "Notice of Objection to Claim" that shall conform to Local Form 113 or a copy of the Objection.
- (f) Requirements Relating to Substantive Objections.
  - (i) As authorized by Fed. R. Bankr. P. 3007(c), the Court hereby orders that an Objection which is based on substantive grounds may contain more than one but no more than 150 claims, unless the Court orders otherwise.
  - (ii) No more than two substantive Objections may be filed each calendar month, unless the Court orders otherwise.
  - (iii) An Objection based on substantive grounds shall include all substantive objections to such claim.
  - (iv) Fed. R. Bankr. P. 7015 shall apply to any substantive Objection and upon the filing of a response to such substantive Objection, the objector may only amend such Objection upon leave of court or written consent of the claimant; provided, however, that if an Objection to a particular claim is determined to be substantive under Local Rule 3007-1(d)(vi) or the claimant filed a response to an Objection

made under Local Rule 3007-1(d)(vi) and the response included supporting documentation or information, then the Objection may be amended without written consent or leave of Court.

- (v) The Court will not consider any substantive Objection to personal injury or wrongful death claims that would be in violation of 28 U.S.C. § 157(b)(2)(B).
- (g) Pro Se. Any claimant may participate pro se (and telephonically) at a hearing on an Objection to his or her claim by following the telephonic appearance procedures located on the Court's website.
- (h) Hearings on Objections. Hearings on Objections may ordinarily be held on the regularly scheduled omnibus hearing dates in chapter 11 cases, consistent with these Local Rules. When the Court determines that the hearing on a particular claim Objection will require substantial time for the presentation of argument and/or evidence, then the Court, in its discretion, may reschedule the hearing on that claim for a different hearing date and time. The parties may also request that a separate hearing on an Objection(s) based on substantive grounds be separately scheduled for a date and time convenient to the Court and the parties.